

**Examiner: Caillouet**

**June 10, 2008**

## **GLUING DEVICE IN A BOTTOM LAYING DEVICE**

### **DETAILED ACTION**

1. The Amendment filed April 25, 2008 has been entered. Claims 1-3 were amended. Claims 4-8 were added.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in prior Non-Final Office action mailed on January 7, 2008.

### ***Claim Objections***

1. Applicant's arguments, see page 12 of the Remarks, filed April 25, 2008, with respect to the objections to claim 1 have been fully considered and are persuasive. The previous objections of claim 1 have been withdrawn.
2. Claim 1 is objected to because of the following informalities: On page 5 of the Amended claims applicant recites the limitation "the processing stations including gluing stations that transfer glue to the folded bottoms during which the folded bottoms lie essentially orthogonal to the tube axis,"... It appears that the word "are" needs to be inserted after the word "lie" so that the limitation states "...during which the folded bottoms are essentially orthogonal to the tube axis,...". Appropriate correction is required.

***Claim Rejections – 35 USC § 112***

3. Applicant's arguments, see page 12 of the Remarks, filed April 25, 2008, with respect to the grounds of rejection under 35 U.S.C. §112 to claim 1 have been fully considered and are persuasive. The §112 rejection of claim 1 has been withdrawn.

***Claim Rejections – 35 USC § 103***

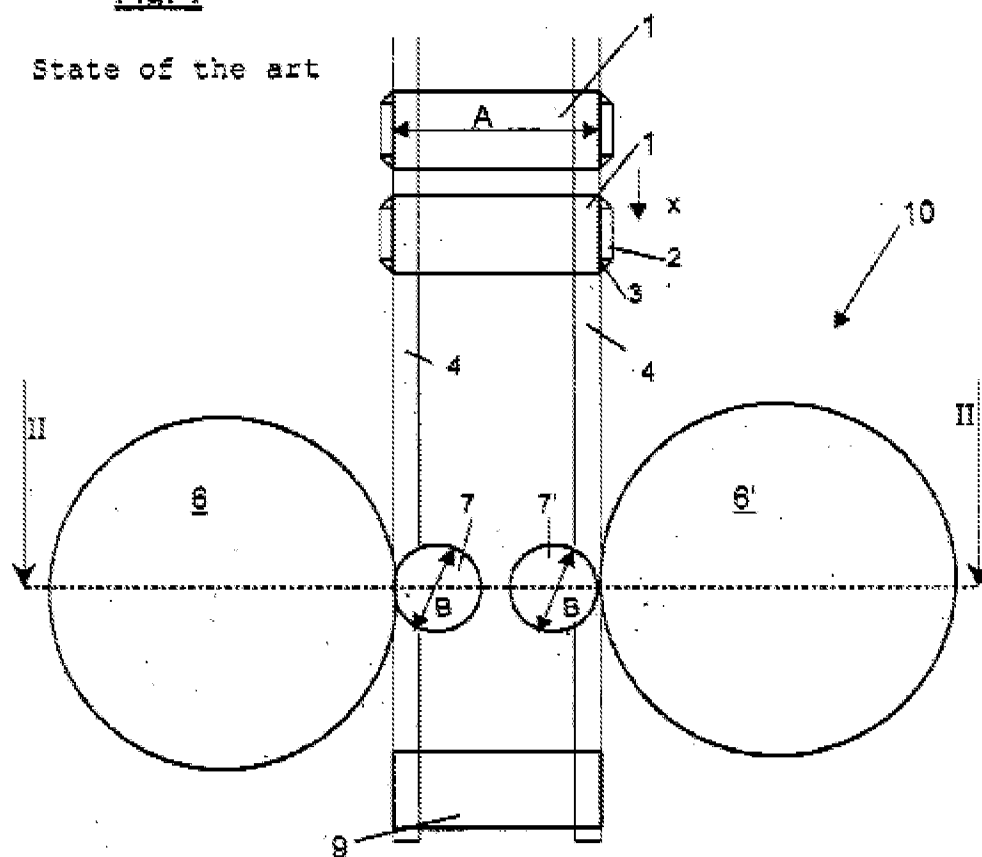
1. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art (APA) in view of Niemeyer (US Patent 3, 043,199).

Regarding claim 1, the admitted prior art discloses a bottoming device having different processing stations, glue transfer rollers and counterpressure rollers whereby during transport the axis of the tube is as claimed and during gluing the folded bottom lies orthogonal to the tube axis (paragraph 16 of applicant's specification; Figs 1-2 below). However, the APA does not teach to offset the gluing stations in the direction of the transport axis.

A statement by an applicant in the specification or made during prosecution identifying the work of another as "prior art" is an admission which can be relied upon for both anticipation and obviousness determinations, regardless of whether the admitted prior art would otherwise qualify as prior art under the statutory categories of 35 U.S.C. 102. *Riverwood Int'l Corp. v. R.A. Jones & Co.*, 324 F.3d 1346, 1354, 66 USPQ2d 1331, 1337 (Fed. Cir. 2003); *Constant v. Advanced Micro-Devices Inc.*, 848 F.2d 1560, 1570, 7 USPQ2d 1057, 1063 (Fed. Cir. 1988).

**Fig. 1**

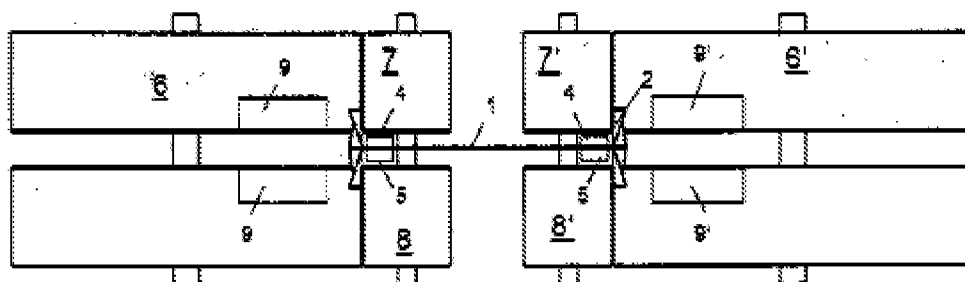
State of the art



**Fig. 2**

State of the art

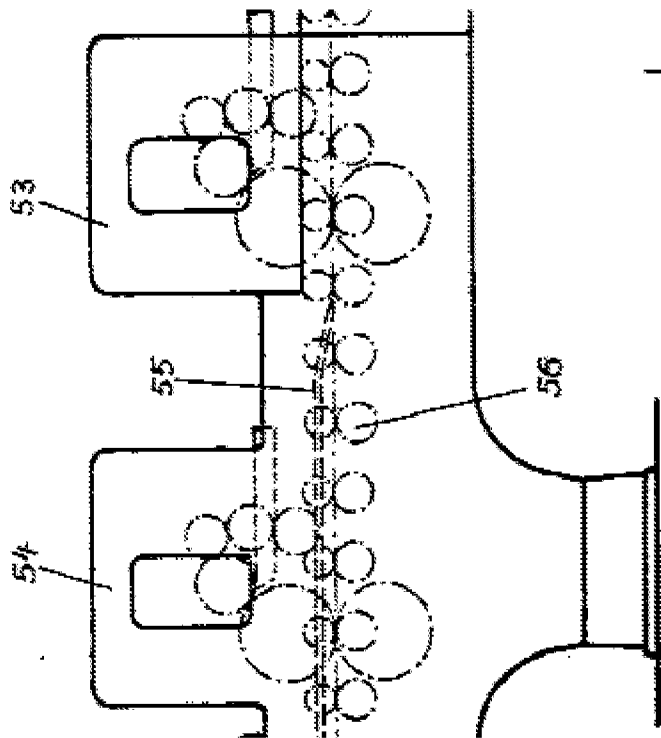
II-II



Niemeyer teaches an apparatus for forming cross bottomed-valve bags from tube segments whereby the tube segments pass through different processing stations,

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forming cross bottoms at both ends. (Column 4 lines 58-70). Niemeyer recognizes the problem where the bags are so short in relation to their width that the gluing portion cannot be performed on the ends of the blank simultaneously (column 1, lines 21-32). Niemeyer further teaches to offset the gluing stations for the cross-bottom bag in the direction of conveyance (column 4, lines 6-19; Fig. 12 & 13), and the gluing application of the ends follows each other immediately. By offsetting the gluing stations, Niemeyer gains an advantage by being able to shorten the length of the machine, and that corresponding operations on the two ends of each blank are not separated from one another by means for performing other operations, but follow each other immediately (column 2, lines 35-41). Therefore, it would have been obvious for one of ordinary skill in the art at the time of the invention to incorporate mutually offsetting gluing rollers onto the admitted prior art, because Niemeyer teaches the use of such station configuration to make compact machine.



Furthermore, it would have been obvious to one of ordinary skill in the art at the time of the invention to use the method of Niemeyer in the method taught by APA because one of ordinary skill in the art would have been able to carry out such a substitution to achieve the predictable result of shortening the length bag bottoming machine. "The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 82 USPQ2d 1385 (2007).

With respect to claim 2, as a result of offsetting the rollers and minimizing the bag size, it would have been obvious to one of ordinary skill in the art to recognize the mean bottom size can to be less than the sum of the diameter of the counterpressure rollers, i.e., the diameter of each of the counterpressure rollers is greater than half the mean bottom size.

With respect to claim 3, Niemeyer discloses that by performing corresponding operations immediately one after the other on the blank helps minimize the length of his machine (column 2, lines 36-41). This allows for the machine to remain similar to that of a normal one without offset in principle (column 2, lines 41-47). This suggests minimizing the distance between the offset pairs and thus to a distance such as less than 50 cm. "Immediately" and similar to normal seems to suggest minimizing the distance and less than 50 cm would have been obvious to one of ordinary skill depending on the size of bag to be produced.

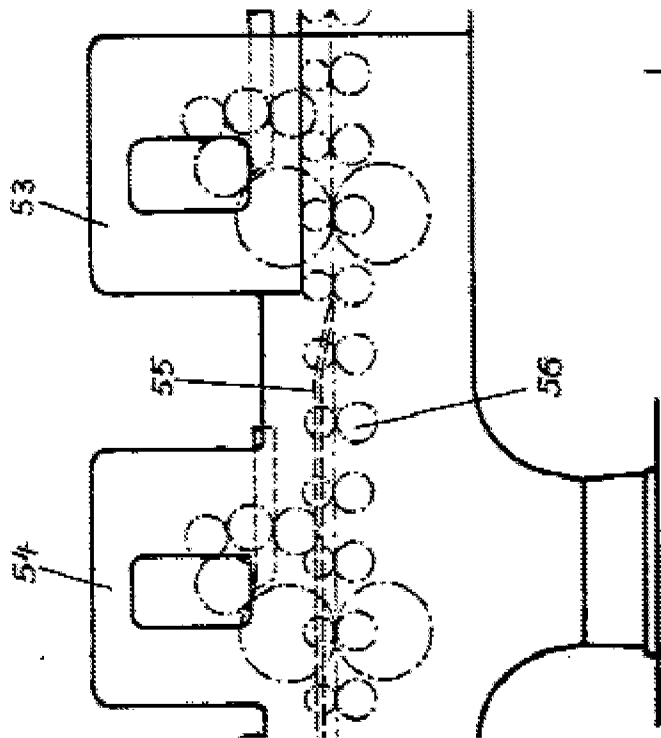
As to claim 4, the admitted prior art discloses a bottoming device having different processing stations, glue transfer rollers and counterpressure rollers whereby during transport the axis of the tube is as claimed and during gluing the folded bottom lies orthogonal to the tube axis (paragraph 16 of applicant's specification; Figs 1-2).

In APA figures 1 and 2, the mean bottom size corresponds to the sum of the diameter of the counterpressure rollers (Specification page 4). Thus if this same prior art device was used for smaller bags (smaller mean bottom size), therefore, it would have been obvious to one of ordinary skill in the art to recognize the mean bottom size would have to be less than the sum of the diameter of the counterpressure rollers, i.e., the diameter of each of the counterpressure rollers is greater than half the mean bottom size.

The APA does not teach to offset the gluing stations in the direction of the transport axis. Niemeyer teaches an apparatus for forming cross bottomed-valve bags from tube segments whereby the tube segments pass through different processing

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stations, forming cross bottoms at both ends. (Column 4 lines 58-70). Niemeyer recognizes the problem where the bags are so short in relation to their width that the gluing portion cannot be performed on the ends of the blank simultaneously (column 1, lines 21-32). Niemeyer further teaches to offset the gluing stations for the cross-bottom bag in the direction of conveyance (column 4, lines 6-19; Fig. 12 & 13), and the gluing application of the ends follows each other immediately. By offsetting the gluing stations, Niemeyer gains an advantage by being able to shorten the length of the machine, and that corresponding operations on the two ends of each blank are not separated from one another by means for performing other operations, but follow each other immediately (column 2, lines 35-41). Therefore, it would have been obvious for one of ordinary skill in the art at the time of the invention to incorporate mutually offsetting gluing rollers onto the admitted prior art, because Niemeyer teaches the use of such station configuration to make compact machine.



Furthermore, it would have been obvious to one of ordinary skill in the art at the time of the invention to use the method of Niemeyer in the method taught by APA because one of ordinary skill in the art would have been able to carry out such a substitution to achieve the predictable result of shortening the length bag bottoming machine. "The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 82 USPQ2d 1385 (2007).

With respect to claim 5, in figures 1 and 2 the APA discloses a bottoming device wherein the pairs of counterpressure rollers include a first roller above a plane of the tube segment (4) and a second roller below the plane of the tube segment (8).

As to claim 6, Niemeyer discloses that by performing corresponding operations immediately one after the other on the blank helps minimize the length of his machine



(column 2, lines 36-41). This allows for the machine to remain similar to that of a normal one without offset in principle (column 2, lines 41-47). This suggests minimizing the distance between the offset pairs and thus to a distance such as less than 50 cm. "Immediately" and similar to normal seems to suggest minimizing the distance and less than 50 cm would have been obvious to one of ordinary skill. It would have been obvious to one of ordinary skill in the art to optimize the distance between the pairs of rollers, depending on the size of the bag to be produced.

With respect to claim 7, as previously stated in the paragraph pertaining to claim 4, Niemeyer teaches that the gluing stations are positioned in the process to where one end of the tube segment is glued before the second end of the tube segment is glued (column 2, lines 35-41).

With respect to claim 8, as a result of offsetting the rollers and minimizing the bag size, it would have been obvious to one of ordinary skill in the art to recognize the mean bottom size can be less than the sum of the diameter of the counterpressure rollers, i.e., the diameter of each of the counterpressure rollers is greater than half the mean bottom size.

### ***Response to Arguments***

4. Applicant's arguments filed April 25, 2008 have been fully considered but they are not persuasive.

Applicant argues on pages 13-15 of the Remarks that the combined disclosures of DE 199 35 117 (DE '117) in view of Niemeyer (US 3043199) would not have rendered obvious the Applicants' claimed invention. The APA is in paragraph 16 and

Figures 1 and 2 of applicant's specification, not DE '117 which is included in applicant's IDS filed on January 9, 2006. It does not appear that DE '117 teaches the figures cited as prior art in the specification of the applicant.

Applicant argues on page 14, that Niemeyer fails to teach that the end portions of the bag are not glued while they are in the orthogonal position. Examiner acknowledges this, but since APA discloses the application of glue to the end portions of the bag while they are in the orthogonal position (paragraph 16, Figures 1 and 2), Niemeyer does not need to teach this feature. Niemeyer is used to show why it would have been obvious to one of ordinary skill in the art to offset the gluing stations in the bag bottoming apparatus.

### ***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTOPHER C. CAILLOUET whose telephone number is (571)270-3968. The examiner can normally be reached on Monday - Thursday; 9:30am-4:00pm, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Phillip Tucker can be reached on (571) 272-1095. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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***Supervisory Patent Examiner, Art Unit 1791***